

PT 02-29

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

BELLEVILLE ECONOMIC)	A.H. Docket #	00-PT-0056
PROGRESS, INC. n/k/a GREATER)		
BELLEVILLE CHAMBER OF COMMERCE)	Docket #s	99-82-225 & 99-82-226
Applicant)		
v.)	P. I. #s	08-22.0-334-005
)		08-22.0-334-042
)	Barbara S. Rowe	
THE DEPARTMENT OF REVENUE)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Linda M. Kniepkamp, of Greensfelder, Hemker & Gale for Belleville Economic Progress, Inc.

Synopsis:

The hearing in this matter was held on September 20, 2002, to determine whether St. Clair County Parcel Index Nos. 08-22.0-334-005 and 08-22.0-334-042 qualified for exemption during the 1999 assessment year.

Mr. Thomas G. Barnett, president of the Greater Belleville Chamber of Commerce, formerly known as Belleville Economic Progress, Inc. (hereinafter referred to as the "Applicant"), was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcels during the 1999 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were used by the applicant for exempt purposes during the 1999 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the

following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that St. Clair County Parcel Index Nos. 08-22.0-334-005 and 08-22.0-334-042 did not qualify for a property tax exemption for the 1999 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 9)

2. On March 28, 2000, the Department received the requests for exemption of St. Clair County Parcel Index Nos. 08-22.0-334-005 and 08-22.0-334-042. On June 29, 2000, the Department denied the requested exemptions finding that the properties were not in exempt ownership and not in exempt use. On July 17, 2000, the applicant timely protested the denials and requested a hearing. The hearing on September 20, 2001, was held pursuant to that request. (Dept. Ex. No. 1)

3. The applicant acquired Parcel Index No. 08-22.0-334-042 by a quitclaim deed dated December 30, 1991. Located on the subject property are a 4,875 square foot office building and a 2,160 square foot warehouse. (Dept. Ex. No. 1)

4. The applicant acquired Parcel Index No. 08-22.0-334-005 by a quitclaim deed dated December 30, 1991. The property is a parking lot. (Dept. Ex. No. 1)

5. The office building on the subject parcel contains 7 offices, a storage room, a board room, restrooms, a kitchen, a copy room, and a conference room. The applicant provides free office space within the building to Belleville Tourism, Proud Partners, Community Development Corporation, and SCORE. The applicant's staff provides information to customers of the tenants. The tenants are only charged for direct costs incurred, such as copies from the copy machine and postage. (Applicant's Ex. No. 1; Tr. pp. 13-14)

6. Belleville Tourism is an organization serving the City of Belleville. They have an office in the applicant's building for meetings. They also use applicant's equipment. In 1999

they had one part-time employee in the building. (Applicant's Ex. No. 1; Tr. pp. 13-14)

7. Proud Partners is involved in trash clean up and collection activities in the community. The executive director of Proud Partners has an office in applicant's building and employs an additional part time employee there. (Applicant's Ex. No. 1; Tr. p. 14)

8. Another organization the applicant provides office space for is Community Development Corporation. Community Development Corporation is involved in providing first time home buyers with low mortgage loans. (Tr. pp. 14-15)

9. SCORE is an agency made up of retired businessmen that provide business services to people in need. The applicant's secretary schedules the meetings in the conference room for SCORE. (Tr. p. 15)

10. The applicant was incorporated under An Act Concerning Corporations of the State of Illinois on October 4, 1924, as the Belleville Chamber of Commerce. The object for which the corporation is formed is "to advance the civic, industrial, commercial and agricultural interests of the City of Belleville and St. Clair County, Illinois." Articles of Amendment were filed under the General Not for Profit Corporation Act on February 20, 1967, to change the name to The Belleville Area Chamber of Commerce. On August 1, 1984, Articles of Amendment were again filed changing the name to Belleville Economic Progress, Inc. (Dept. Ex. No. 1)

11. The applicant is a chamber of commerce with approximately 700 members that are provided a variety of benefits. (Tr. p. 13)

12. The benefits and events the applicant offered its members in 1999 included seminars, monthly "Business after Hours" socials, a business week breakfast, a golf outing, a business exposition, the city officials Bar-B-Q, a county board reception, the breakfast club, and a special event called the "Attitudes Up Seminar." (Applicant's Ex. No. 1)

13. The profit and loss statement for the applicant for January through December 1999 shows dues income in the amount of \$221,092.48, special events income of \$71,894.55, and total income of \$304,403.14. The total expenses for that time period were \$297,996.65 for a net gain of \$6,406.49. (Applicant's Ex. No. 1)

14. Section 8 of the income section of the profit and loss statement is entitled “Reimb. Accounts (Affiliate Reimburs. . .).” It shows an income amount of \$55.00 from BelleScott¹. No income was shown from DTBC² or Tourism. (Applicant’s Ex. No. 1)

15. In the profit and loss statement, under “expenses” at section 10 are listed salaries. Within that section is an expense at line 10h for the “Director of Proud Partners” in the amount of \$10,000.00. Line 10j is entitled “Tourism Coordinator” and lists an amount of \$20,707.55. Line 10jr is entitled “Tourism Reimbursement” and has an amount listed of \$-22,367.28. The total for line 10j “Tourism Coordinator” is \$-1,659.73. (Applicant’s Ex. No. 1)

16. The applicant also submitted its balance sheet as of December 31, 1999, that shows net assets and liabilities in the amount of \$171,704.38. (Applicant’s Ex. No. 1)

17. The applicant has a dues structure dependent upon the organizational configuration of the member. (Tr. pp. 17-18)

18. The applicant has three classes of members: active, associate, and honorary. Members are either elected, file a written petition for membership, or are appointed by the board. The bylaws of the applicant have a provision for termination or suspension of membership if the member is in default in the payment of dues. Resignation does not relieve the member of the obligation for payment of accrued dues. (Dept. Ex. No. 1)

18. The applicant has no written policy regarding the waiver of its membership fees. If done, it would be at the discretion of the board of directors or the executive director of the applicant. (Tr. p. 19)

19. The applicant is exempt from federal income tax pursuant to a determination in August 1925 that it is a qualifying organization under section 501(c)(6) of the Internal Revenue Code. (Applicant’s Ex. No. 1)

CONCLUSIONS OF LAW:

¹ BELLESCOTT WAS NOT IDENTIFIED OR EXPLAINED.

² It is unclear what the acronym DTBC stands for or what type of reimbursement the applicant would get from the organization.

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization

is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services. . . .

Here, the appropriate exemption applies to "institutions of public charity." The applicant asserts that it is not a typical chamber of commerce and meets several of the tests for a charitable organization. The basis of this assertion is applicant's involvement with the community and its donation of free space to other organizations on the subject property.

Our courts have long refused to apply the public charity exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all institutions of public charity share the following distinctive characteristics:

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;

- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

The applicant is a chamber of commerce. Its purpose, according to its articles of incorporation, is to advance the civic, industrial, commercial and agricultural interests of the City of Belleville and St. Clair County, Illinois. It is well settled in Illinois that the character and purpose for which a corporation is organized, must be ascertained from its articles of incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922), and also, Rotary International v. Paschen, 14 Ill.2d 480 (1958). Applicant's articles of incorporation provide that it is organized for civic and not primarily for charitable purposes.

The applicant has no provision for a waiver or reduction of fees in its bylaws or articles of incorporation as suggested by the statute. While the applicant does not charge other organizations using its facilities, it charges members for dues and activities and has no written provision for waivers of those fees.

The applicant's primary source of income in 1999 was from membership dues and activities. Those monies are not from public and private charity as suggested by the guidelines in Methodist Old Peoples Home. In addition, as there is no waiver provision for the applicant's fees and costs for its activities. Although the Illinois courts have held that charging fees to a person who has the ability to pay will not destroy a charitable exemption, Small v. Pangle, 60

Ill.2d 510 (1975), the guidelines advocate that charity should be dispensed to all who need and apply for it and no obstacles shall be placed in the way of those wishing to avail themselves of applicant's charitable benefits dispensed. The applicant has not established that it dispenses charity to all who need and apply for it.

The applicant states that it provides space rent free to Proud Partners and Belleville Tourism. However, both tourism and Proud Partners appear on the profit and loss statement of the applicant with amounts allocated to those entities under salaries. The applicant did not explain these relationships. As the applicant is a civic organization looking to respond to the needs of the business community of the City of Belleville and St. Clair County, and tourism and trash cleanup are services provided to the members of the communities, it is reasonable to assume that the relationship between the applicant and the two entities is more than just a landlord providing free office space.

I therefore find that the applicant has not established that it dispenses charity to all who need and apply for it; that obstacles are not placed in the way of those who would avail themselves of applicant's charitable benefits; that the applicant derives its funds from public and private charity; and that the applicant benefits an indefinite number of persons. Therefore the ownership and use of the property is not primarily charitable.

For the foregoing reasons, it is determined that the applicant is not a charitable organization using the subject properties for charitable purposes. It is therefore recommended that St. Clair Parcel Index Nos. 08-22.0-334-005 and 08-22.0-334-042 remain on the tax rolls for 1999 and be assessed to the applicant, the owner thereof.
Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
April 2, 2002